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SUPREME COURT OF THE UNITED STATES

COMMONWEALTH OF PENNSYLVANIA,
Petitioner :

v. : NO. 88-1056 ~~88-1065~~

RICHARD WAGGONER,
Respondent :

MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS

The Respondent, Richard Waggoner, asks leave to file the attached Brief in Opposition to Certiorari, without prepayment of costs and to proceed in forma pauperis. Respondent has been granted leave to so proceed in the Superior Court of Pennsylvania. Respondent's Affidavit in support of this motion is attached hereto.

John L. Merrick, Esquire

SUPREME COURT OF THE UNITED STATES

COMMONWEALTH OF PENNSYLVANIA, :
Petitioner

v. : NO. 88-1065

RICHARD WAGGONER, :
Respondent

AFFIDAVIT

I, Richard Waggoner, being first duly sworn according to law, depose and say that I am the Respondent in the above-captioned case; that in support of my motion to proceed without being required to prepay fees, costs or give security therefor, I state that because of my poverty I am unable to pay the costs of said case or to give security therefore; and that I believe I am entitled to redress.

I further swear that the responses which I have made to the questions and instructions below relating to my ability to pay the cost of proceeding in this court are true.

1. **Are you presently employed?** No. I last worked in late 1986 at the Everyday Gourmet Shop in Newtown Square, Pa. My wages for 1986 were $2000. I have been unable to work for two years because of a physical disability. I have an artificial hip, and I am due to have further surgery to correct the degeneration of my other hip joint.

2. **Have you received within the past twelve months any income from a business, profession, or other form of self-employment, or in the form of rent payments, interest, dividends, or other source?** Yes, my mother died 18 months ago, and I inherited stocks, bonds, and mutual fund shares. These investments pay less than $2,000 per year in interest and dividends.

3. **Do you own any cash or checking or savings account?** Yes, I own a checking account with a current balance of $1476.21.

4. **Do you own any real estate, stocks, bonds, notes, automobiles, or other valuable property?** Yes, I own stocks, bonds, and mutual fund shares worth between $25,000 and $30,000.

5. **List the persons who are dependent upon you for support and state your relationship to those persons.** I support only myself.

I understand that a false statement or answer to any questions in this Affidavit will subject me to penalties for perjury.

Richard G. Waggoner

Richard G. Waggoner,
Respondent

Subscribed and Sworn to Before
me this 23rd day of March, 1989.

Catherine E. Pierce

NOTARIAL SEAL
Catherine E. Pierce, Notary Public
West Chester, Chester County
My Commission Expires July 8, 1991

No. 88-1056

In The

Supreme Court of the United States

October Term, 1988

COMMONWEALTH OF PENNSYLVANIA,
Petitioner,

vs.

RICHARD WAGGONER,
Respondent.

Brief in Opposition to Petition for Writ of Certiorari

John R. Merrick, Esquire
Public Defender of Chester
County, Pennsylvania
17 North Church Street
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Counsel for Respondent

QUESTIONS PRESENTED

1. IF A CRIMINAL DEFENDANT IS SUBJECTED TO CUSTODIAL INTERROGATION DURING THE ADMINISTRATION OF VIDEOTAPED SOBRIETY TESTS, IS THE AUDIO PORTION OF THE TAPE PROTECTED BY THE FIFTH AMENDMENT?

2. DOES IS PENNSYLVANIA LAW PROVIDING THAT THE RIGHT TO COUNSEL ATTACHES AT ARREST ACCORD WITH CONSTITUTIONAL PRINCIPLES; EVEN IF VIEWED AS AFFORDING A MORE EXPANDED RIGHT TO COUNSEL THAN PROVIDED BY THE SIXTH AMENDMENT, WAS THE PENNSYLVANIA COURT'S DECISION BASED ON AN INDEPENDENT AND ADEQUATE NON-FEDERAL GROUND?

3. WHEN THE VIDEOTAPING OF A CRIMINAL DEFENDANT UNQUESTIONABLY INVOLVES CUSTODIAL INTERROGATION BY THE POLICE, IS SUCH A CRITICAL STAGE AT WHICH HE IS ENTITLED TO THE ASSISTANCE OF COUNSEL?

4. DID THE DEFENDANT WAIVE HIS MIRANDA RIGHTS ~~OR~~ HIS RIGHT TO COUNSEL?

5. IS THERE A NEED FOR A VIDEOTAPE EXCEPTION TO MIRANDA V. ARIZONA OR EDWARDS V. ARIZONA?

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STATEMENT OF THE CASE

On July 24, 1986, Officer Lester J. Neri of Tredyffrin Township, Chester County, Pennsylvania, arrested Richard Waggoner, the Respondent, for driving under the influence of alcohol. At the scene, Waggoner was administered field sobriety tests and waived his Miranda rights.

The police took Waggoner to a hospital, where he refused to submit to a blood test, and then transported him to the township's police station. At the station he was once again subjected to the field sobriety tests, which procedure was videotaped. For discussion, the tape can conveniently be divided into three parts: 1) the reiteration of the Miranda warnings; 2) the performance of the sobriety tests; and 3) Waggoner's interrogation concerning the offense.

During the administration of the Miranda warnings, Waggoner told the officer that he could not afford an attorney; however, the officer proceeded to complete the warnings without attempting to clarify this response. During the second portion of the tape, Waggoner engaged in conversation with the officer, revealing his thoughts concerning his performance of the tests. During the third portion, Waggoner responded to the officer's questions concerning the details of the offense.

On January 21, 1987, Waggoner was tried by a jury and found guilty of driving under the influence of alcohol. The trial judge refused to suppress the videotape, which was viewed by the jury.

On appeal, the Superior Court of Pennsylvania awarded a new trial, holding that the audio portion of the videotape should have been suppressed. The Superior Court found that Waggoner's Fifth and Sixth Amendment rights had been violated in that: the prosecution had not established a waiver of his Miranda rights; his right to counsel had attached at arrest; and the videotaping was a critical stage at which he had a right to counsel and the right not to incriminate himself.

The Supreme Court of Pennsylvania refused the Petitioner's request for review of the Superior Court's decision, and Petitioner now asks this Court to grant its Petition for Writ of Certiorari.

REASONS FOR DENYING THE WRIT

I. AS THE RESPONDENT WAS SUBJECTED TO CUSTODIAL INTERROGATION DURING THE ADMINISTRATION OF VIDEOTAPED SOBRIETY TESTS, THE AUDIO PORTION OF THE TAPE IS PROTECTED BY THE FIFTH AMENDMENT.

There is absolutely no question that a portion of the videotape at issue constituted custodial interrogation of the Respondent. Such is clear from the record and has been conceded by the Petitioner. Petition for Writ of Certiorari, p.9. Consequently, the police were required to administer the Miranda warnings at least with respect to this portion of the tape. Miranda v. Arizona, 384 U.S. 436 (1966).

As police questioning of an in-custody criminal defendant occurred, this case does not present the issue of whether recitation of the alphabet is testimonial, which was recognized but not reached in Pennsylvania v. Bruder, ___ U.S. ___, ___ n.3, 102 L.Ed.2d 172, 177 n.3 (1988). Nor does this case present the issue raised in South Dakota v. Neville, 459 U.S. 553 (1983)(concerning the distinction between real or physical evidence and communications or testimony).

As Respondent was subjected to custodial interrogation, unless he waived his Miranda rights, the audio recording relating to the portion of the tape should not have been admitted at his trial -- the conclusion reached by the Superior Court of Pennsylvania. Thus, irrespective of whether the other portions of the videotape constitute interrogation, Respondent is entitled to a new trial.

Considering that a significant part of the videotape unarguably constituted custodial interrogation, this Court need inquire no further as to whether the Fifth Amendment applies to the other portions of the tape. However, in response to Petitioner's assertions, Respondent will discuss these other portions: the administration of the Miranda warnings and the performance of the sobriety tests.

Respondent concedes that the videotaping of the administration of his Miranda warnings is non-testimonial. (However, as these warnings flow from the Self-Incrimination Clause, it is paradoxical to conclude that the Fifth Amendment does not apply to them.)

The middle portion of the videotape depicting the administration of the sobriety tests poses a more difficult Fifth Amendment issue. This portion of the tape reveals far more than Respondent's physical performance of the sobriety tests. Clearly, he uttered words of significant testimonial value. During the administration of the tests, the police officer engaged in constant conversation with the Respondent. In several instances,

the Respondent's words could easily constitute evidence to be used against him. For example, during the testing, Respondent made the following comments: "Is this put on tape?" "It makes you kind of dizzy." "How did I do?" "This is rough." "Hmm. Screwed up." Any competent prosecutor would seek to introduce words like these into evidence to show that a defendant had guilty knowledge or was manifesting symptoms of being under the influence of alcohol.

As stated in Doe v. United States, 487 U.S. ___, 101 L.Ed.2d 184 (1988), the policies underlying the Self-Incrimination Clause "are served when the privilege is asserted to spare the accused from having to reveal, directly or indirectly, his knowledge of facts relating him to the offense or from having to share his thoughts and beliefs with the Government." Id. at ___, 101 L.Ed.2d at 199. During the administration of the sobriety tests, Respondent certainly shared his thoughts and beliefs with the police. He expressed his frustration with the difficulty with the tasks, his doubts concerning his performance, his admitted failure in "walking the line," and offered an explanation for his problem (arthritis in his right hip and knee).

In conclusion, Respondent does not assert that the Self-Incrimination Clause pertains to all videotapings of sobriety tests. Indeed, a procedure which did not prompt a defendant to share his inner thoughts may pass Constitutional

muster. But such is clearly not this case. The audio recording pertinent to the middle portion of the videotape revealed the Respondent sharing his thoughts and beliefs with the police; accordingly, he was entitled to the protection of the Fifth Amendment.

II. IN ACCORDANCE WITH CONSTITUTIONAL PRINCIPLES, PENNSYLVANIA LAW PROVIDES THAT THE RIGHT TO COUNSEL ATTACHES AT ARREST; MOREOVER, EVEN IF VIEWED AS AFFORDING A MORE EXPANSIVE RIGHT TO COUNSEL THAN PROVIDED BY THE SIXTH AMENDMENT, THE SUPERIOR COURT'S DECISION WAS BASED ON AN INDEPENDENT AND ADEQUATE NON-FEDERAL GROUND.

A criminal defendant's Sixth Amendment right to counsel attaches at "the initiation of adversary judicial proceedings." United States v. Gouveia, 467 U.S. 180, 188 (1984)(citing with approval Kirby v. Illinios, 406 U.S. 682 (1972) and collecting cases).

As a matter of state law, the Supreme Court of Pennsylvania has specifically held that a warrantless arrest (as occurred in this case) constituted the initiation of adversarial judicial proceedings. Commonwealth v. Richmond, 458 Pa. 167, 320 A.2d 351 (1974). The Richmond decision recognized that the various state procedures may vary as to the initiation of criminal proceedings:

> Kirby does not establish an all inclusive rule; rather, the line to be drawn depends upon the procedure employed by each state.
>
> * * *
>
> While the plurality in Kirby attaches some significance to the indictment, they specifically mention several benchmarks: "formal charge, preliminary hearing, indictment, information, or arraignment."
>
> * * *
>
> ...we hold that Commonwealth v. Whiting, 439 Pa. 205, 266 A.2d 738 (1970) appropriately draws the line for determining the initiation

> of judicial proceedings in Pennsylvania at the arrest.

Id. at ___, 320 A.2d at 353. See also Commonwealth v. Zabala, 310 Pa.Super. 301, 456 A.2d 622, 628 (1983)(collecting cases).

The rulings by the Supreme and Superior Courts of Pennsylvania that the right to counsel attaches at arrest are unremarkable in that the Pennsylvania Rules of Criminal Procedure, as promulgated by the Supreme Court, specifically provide for the institution of criminal cases:

> Criminal proceedings in court cases shall be instituted by:
>
> * * *
>
> 2. an arrest without warrant when the offense is a felony or misdemeanor committed in the presence of the police officer making the arrest;
>
> * * *

Pennsylvania Rule of Criminal Procedure No. 101.

Unsurprisingly, the Superior Court held that the Respondent's right to counsel attached at his arrest. Commonwealth v. Waggoner, 373 Pa.Super. 23, 540 A.2d 280 (1988). While explicitly basing its decision on the Sixth Amendment, the Court cited Zabala, supra (which stated that "Pennsylvania courts have long held that an accused's right to counsel is triggered by the accused's arrest") and included Richmond, supra, as one of its citations.

Even if this Court finds that the Superior Court's decision was based upon the Sixth Amendment, there is an adequate and independent ground for its decision based on the Pennsylvania Constitution. As stated by the Superior Court in Commonwealth v. Ferguson, 327 Pa.Super. 305, 475 A.2d 810, 813 (1984), "the rule expressed in Whiting [that the right to counsel attaches at arrest] remains the law of Pennsylvania by virtue of Article I §9 of the Pennsylvania Constitution which provides, in relevant part, that 'In all criminal prosecutions the accused hath a right to be heard by himself and his counsel.'"

As this non-federal ground independently and adequately supports the Superior Court's judgment, this Court does not have jurisdiction to decide this issue.

III. BECAUSE THE VIDEOTAPING OF THE RESPONDENT UNQUESTIONABLY INVOLVED CUSTODIAL INTERROGATION BY THE POLICE, SUCH WAS A CRITICAL STAGE AND HE WAS ENTITLED TO THE ASSISTANCE OF COUNSEL.

The Petitioner has agreed that a portion of the videotaped interview constitutes custodial interrogation. Petition for Writ of Certiorari, p.9. It is beyond cavil that a defendant in custody of the police has a right to counsel while being interrogated. Edwards v. Arizona, 451 U.S. 477 (1981). Thus, this portion of the videotape was certainly a critical stage at which Respondent had the right to counsel.

Unless this Court finds that the Respondent has waived this right, further inquiry is not necessary. Respondent was in custody, was interrogated, was not afforded counsel, and his videotaped statements -- which should have been suppressed -- were used against him at his trial. Consequently, the Superior Court was correct in awarding him a new trial.

It is simply not necessary for this Court to consider whether the "testing" portion of the videotaping was a critical stage. However, in response to Petitioner's assertions, the Respondent calls attention to the testimonial nature of such testing as described in the discussion of the Self-Incrimination Clause, supra, and the portion of the Superior Court's opinion concerning the Sixth Amendment in Waggoner, supra.

Indeed, the Superior Court noted the value of counsel at such procedure:

> Waggoner's counsel, if present during the videotaping, may have been able to prevent at least some of the prejudice which inured to Waggoner as a result of the questions, comments, and statements he made during the taping. His counsel could have prevented him from incriminating himself by advising him to speak as little as possible during the test and directing him not to answer certain or all of the questions posed by Officer Neri.

Id. at ___, 540 A.2d at 285.

IV. RESPONDENT DID NOT WAIVE HIS MIRANDA RIGHTS OR HIS RIGHT TO COUNSEL.

At the outset of the videotaping, Respondent was re-advised of his Miranda rights. When the police officer asked him whether he understood his right to a free lawyer, he said, "I can't afford a lawyer." Rather than attempt to clarify this ambiguous response, the officer blithely proceeded as follows:

> OFFICER NERI: Understanding these rights and having them in mind, do you wish to give up these rights and talk to me now?
>
> THE DEFENDANT: About what?
>
> OFFICER NERI: Well there will be some questions I have here. If you wish to answer them you may, and if you don't you can just refuse to answer them and that's perfectly all right.
>
> THE DEFENDANT: Well, ask them.
>
> OFFICER NERI: Okay.
>
> THE DEFENDANT: Now, I may answer them; I may not.
>
> OFFICER NERI: That's fine.
>
> THE DEFENDANT: It depends. As I said, it depends on what the question is. Okay.
>
> OFFICER NERI: That's okay.
>
> THE DEFENDANT: All right.

Respondent asserts that his ambiguous response to the Miranda warnings did not constitute a waiver of his rights and relies on the following portion of Superior Court's opinion:

"Waggoner contends that his comment "I can't afford a lawyer" constituted an invocation of his right to counsel which barred any further custodial interrogation by the police. Moreover, Waggoner asserts that his response, "I may answer them, I may not. It depends on what the question is," to Neri's inquiry about whether he would respond to questions, was clearly the response of a wary man. Therefore, Waggoner argues, the Commonwealth should have shouldered the burden of establishing an explicit waiver of his right to counsel.

"Initially, we note that had Waggoner not been rewarned of his Miranda rights at the beginning of the videotaping, we would be required to examine the totality of the circumstances to determine whether he should have been rewarned. Commonwealth v. Riggins, 451 Pa. 519, 304 A.2d 473 (1973). If our examination then revealed that his first warning was sufficient, our holding then would be that Waggoner voluntarily, knowingly, and intelligently waived his Miranda rights. However, the fact remains that Waggoner was given a second Miranda warning and during this second warning he voiced an ambiguous statement regarding his understanding of his right to counsel.

"In Edwards v. Arizona, 451 U.S. 477 (1981)(per curiam), the Supreme Court held that an accused who has expressed his desire to deal with the police only through counsel may not be subject to further interrogation by the authorities until counsel has been made available to him, unless the accused initiates further communication, exchanges, or conversations with the police. In Smith v. Illinois, 469 U.S. 91 (1984), the following exchange took place between a police officer and the appellant: "Q. You have a right to consult with a lawyer and to have a lawyer present with you when you're being questioned. Do you understand that? A. Uh, yeah. I'd

like to do that." Id. at 93. The Supreme Court held that this was an unambiguous invocation of the appellant's right to counsel. In so holding, the Court noted that courts have developed conflicting standards for determining the consequences of an ambiguous or equivocal assertion of the right to counsel:

> Some courts have held that all questioning must cease upon any request for or reference to counsel, however equivocal or ambiguous. Others have attempted to define a threshold clarity for such requests, and have held that requests falling below this threshold do not trigger the right to counsel. See, e.g., People v. Krueger, 82 Ill. 2d 305, 311, 412 N.E.2d 537, 540 (1980) ("[A]n assertion of the right to counsel need not be explicit, unequivocal, or made with unmistakable clarity," but not " every reference to an attorney, no matter how vague, indecisive or ambiguous, should constitute and invocation of the right to counsel"), cert. denied, 451 U.S. 1019, 101 S.Ct. 3009, 69 L.Ed.2d 390 (1981). Still others have adopted a third approach, holding that when an accused makes an equivocal statement that "arguably" can be construed as a request for counsel, all interrogation must immediately cease except for narrow questions designed to "clarify" the earlier statement and the accused's desires respecting counsel.

469 U.S. at 96 n.3. However, because Smith's request for counsel was unambiguous under any of the various standards, the Supreme Court did not have to resolve the conflict between the courts. Id. at 93.

"In Commonwealth v. Hubble, 509 Pa. 497, 504 A.2d 168 (plurality opinion), cert. denied, 106 S.Ct. 3272 (1986), the Supreme Court of Pennsylvania considered the Smith alternatives. The court reasoned that the first approach, in which all questioning must cease upon any mention of counsel no matter how ambiguous or equivocal, is unduly restrictive. The court then proceeded to apply the other two standards, concluding that under either of them, Hubble's ambiguous request for counsel did not trigger the Edwards prophylactic rule. Id.

"In Commonwealth v. Davis, ___ Pa.Super. ___, 526 A.2d 1206 (1987), the appellant was given his Miranda warnings and gave every indication of fully understanding them. Then:

> [Appellant] said to the police that he wanted to talk about and make a statement regarding the crimes under investigation. Having said this, he was given a form on which were enumerated his rights under Miranda. Two questions to be answered at the bottom of the form contained a waiver proviso. To the first question, "Do you understand each of these rights I have explained to you," [appellant] answered by writing the word, "yes" and his initials thereafter. To the second question, "Having these rights in mind do you wish to talk to us now?", [appellant] wrote "no". At trial the police officers testified that they were baffled by the written "no" answer in light of [appellant's] oral statement immediately prior thereto that he wanted to make a statement regarding the crimes under investigation. As a result, they asked why he wrote "no" to the second question and [appellant] answered that he meant, "I don't want an attorney." After this exchange, the [appellant] wrote the word

> "yes" to this second question and his initials thereafter in substitution of the word "no". [Appellant] then made his oral statement regarding the crimes involved in this case which the officers reduced to writing. The [appellant] signed the statement and initialed its pages.

Id. at ___, 526 A.2d 1208. The Davis court held that the questions by the police in their attempt to clarify the appellant's intent in making the two conflicting statements were appropriate and commendable. The court reasoned that by attempting to clarify the ambiguity in the appellant's responses without employing any coercive tactics, the police gave the appellant a "free and untrammeled choice of silence or speech." Id. at ___, 526 A.2d at 1211.

"When Waggoner was given his Miranda warnings during the videotaping, he stated that he could not afford a lawyer. This statement constituted an ambiguous assertion of his right to counsel. The statement was directly at odds with Officer Neri's explanation to Waggoner that it he could not afford a lawyer, he could have one appointed for him free of charge. Considering Waggoner's response, one could easily draw the conclusion that Waggoner had failed to understand that he could have a free lawyer appointed for him. Moreover, Waggoner's statement would seem to indicate that if he could have afforded a lawyer, he would have wanted one present. Waggoner's ambiguous response prevents one from stating with unswerving confidence that he fully understood he had the right to have a lawyer appointed for him at no cost and that he waived that right.

"Officer Neri responded to Waggoner's inconsistent reply by continuing with the Miranda colloquy. Unlike the officers in Davis, Officer Neri never attempted to clarify whether Waggoner had understood his right to have counsel free of charge. The fact that Waggoner ultimately decided that he might answer Neri's questions depending on what the question was did not obviate the need to

> establish that he had understood and waived his right to counsel. In cases such as this, when a defendant's statement regarding his Miranda rights is ambiguous and inconsistent with an officer's explanation of those rights, the officer should ask questions to clarify what the defendant meant by his statement or why he made it. Simply ignoring the fact that the statement was made will not suffice. A defendant's waiver of his Miranda rights is valid only if made voluntarily, knowingly, and intelligently. Miranda v. Arizona, supra. In light of the ambiguity in the appellant's statement, we cannot state with a sufficient degree ~~of~~ certainty that he understood and waived his Miranda rights. The burden of proving by a preponderance of evidence that a waiver of a constitutional right was knowing, voluntary, and intelligent rests upon the Commonwealth. Commonwealth v. Hughes, 477 Pa. 180, 186, 383 A.2d 882, 885 (1978). Based on the foregoing, we cannot find that the Commonwealth met this burden. The audio portion of the videotape, therefore, should have been suppressed.
>
> "In summary, the visual portion of the videotape wherein Waggoner performed the physical acts of the field sobriety test was properly admitted into evidence. However, the audio portion of the videotape violated Waggoner's right to counsel as provided by the fifth and sixth amendments and, consequently, should have been suppressed."

Waggoner, supra, 373 Pa.Super. at ___, 540 A.2d at 287-89.

V. THERE IS NO NEED FOR A VIDEOTAPE EXCEPTION TO MIRANDA V. ARIZONA OR EDWARDS V. ARIZONA.

Since 1966, Miranda v. Arizona, supra, has served to protect criminal defendants' rights against self-incrimination. Of more recent vintage, Edwards v. Arizona, supra, has protected defendants asserted their right to counsel. The creation of a videotape exception to either case would open a Pandora's Box of woes upon judges, lawyers, and law enforcement officers --all of whom would be compelled to contend with the depth and breadth of this new legal concept.

CONCLUSION

For the above reasons, the Respondent, Richard Waggoner, respectfully requests this Honorable Court to deny certiorari in this matter.

Respectfully submitted,

John R. Merrick

John R. Merrick, Esquire
Public Defender of Chester County
Counsel for Respondent

SUPREME COURT OF THE UNITED STATES

COMMONWEALTH OF PENNSYLVANIA, :
Petitioner

v. : NO. 88-1065

RICHARD WAGGONER, :
Respondent

PROOF OF SERVICE

I hereby certify that I am on this day serving a copy of this document upon the person and in the manner indicated below, which satisfies the requirements of Rule 28.3:

Service in Person

Stuart Suss, Esquire
Deputy District Attorney
District Attorney's Office
17 North Church Street
Courthouse Annex - Second Floor
West Chester, PA 19380

All parties required to be served have been served.

Date: March 27, 1989

John R. Merrick

John R. Merrick, Esquire
Public Defender of Chester
County, Pennsylvania
17 North Church Street
Courthouse Annex - Third Floor
West Chester, PA 19380

SUPREME COURT OF THE UNITED STATES

COMMONWEALTH OF PENNSYLVANIA, :
Petitioner

v. : NO. 88-1065

RICHARD WAGGONER, :
Respondent

I, John R. Merrick, being a member of the Bar of the Supreme Court of the United States, state that the respondent's Brief in Opposition to Petition for Writ of Certiorari in the above-captioned case was deposited in the United States Post Office on Walnut and Gay Streets, West Chester, Pennsylvania, on March 27, 1989, within the permitted time for filing.

John R. Merrick

John R. Merrick, Esquire
Public Defender of Chester
County, Pennsylvania
17 North Church Street
Courthouse Annex - Third Floor
West Chester, PA 19380

Subscribed and Sworn to Before
me this 27th day of March, 1989.

Catherine E. Pierce

NOTARIAL SEAL
Catherine E. Pierce, Notary Public
West Chester, Chester County
My Commission Expires July 8, 1991